

MINUTES
Montana Fish, Wildlife & Parks Commission Meeting
1420 East 6th Avenue – Helena Headquarters
Helena, MT 59620
DECEMBER 14, 2006

Commission Members Present: Steve Doherty, Chairman; Tim Mulligan, Vice-Chairman; John Brenden; Shane Colton; Vic Workman.

Fish, Wildlife & Parks Staff Present: Larry Peterman, Chief of Field Operations, and FWP Staff.

Guests: See December 14, 2006 Commission file folder for those who signed in.

Topics of Discussion:

1. Opening - Pledge of Allegiance
2. Approval of October 19, 2006 Commission Meeting Minutes
3. Approval of Commission Expenses through November 30, 2006
4. Approval of 2007 Commission Meeting Schedule - Final
5. Commercial Use Rules – Final
6. Smith River Special Use Area Rule – Final
7. Parks Biennial Fee Rule – Final
8. Stranahan Acquisition in the Alberton Gorge Corridor - Final
9. North Shore MO River Land Acquisition Next to Giant Springs Park – Endorsement
10. Lilienthal Property / PPL Montana Public Access Mitigation (Cottonwood Grove)– Final
11. Machler Recreational Access & Conservation Easement on Big Spring Creek – Final
12. Petition for No-Wake Zone on Swan Lake in Region 1 – Endorsement
13. Petition for No-Wake Zone at White Sandy on Hauser Lake – Endorsement
14. Lyman Creek Acquisition in Region 2 in Ravalli County - Final
15. Bernie Hart Farm Conservation Easement in Region 6 in Valley County – Final
16. Ovando Mountain Land Acquisition / Jacobsen-Valiton Property – Final
17. 2007 Black Bear Quotas – Tentative
18. 2007 Spring Turkey Seasons and Quotas – Tentative
19. 2007 Game Damage Permit Authorizations – Tentative
20. 2007 Sheep Trapping and Transplanting – Endorsement
21. Refine 2007 Mule Deer Season Adjustments in Region 5 Due to Forest Fires – Tentative
22. Pennsylvania Request for Pheasant Trapping – Informational
23. 2007 Bighorn Sheep HD340 Closure – Tentative
24. Sage Brush Landowner Incentive Plan Program – Informational
25. Grizzly Bear Management Plan for Western Montana – Final
26. Require Mandatory Reporting of Previous Years Hunting and Fishing Harvest Before Purchasing Licenses for the Next Year – Informational
27. Open Microphone – Public Opportunity to Address Additional FWP Issues

1. Opening - Pledge of Allegiance. Chairman Doherty called the meeting to order at 8:00 a.m. and led the Pledge of Allegiance.

2. Approval of October 19, 2006 Commission Meeting Minutes.

Action: Workman moved and Brenden seconded the motion to approve the minutes of the October 19, 2006 Commission meeting. Motion carried.

3. Approval of Commission Expenses through November 30, 2006

Action: Colton moved and Mulligan seconded the motion to approve the Commission expenses as presented. Motion carried.

4. Approval of 2007 Commission Meeting Schedule – Final. The Commissioners approved the meeting schedule with the stipulation that locations for regional meetings would be determined once the two new Commissioners were appointed and on-board.

Action: Workman moved and Colton seconded the motion to approve the 2007 Commission meeting schedule as proposed, with the understanding that some of the meetings will be held regionally. Motion carried.

5. Commercial Use Rules – Final. Chris Smith, FWP Chief of Staff, Charlie Sperry, River Management Specialist, and Becky Dockter, FWP Legal Counsel, presented the proposed final Commercial Use Rules. These proposed final rules are based on input from the public, other agencies, and FWP Staff. There are actually two sets of rules – commercial use rules and permit fee rules. The commercial use rules were necessary because the existing livestock and commercial use rule does not provide the guidance required. Sperry narrated a Power Point presentation.

In November of 2005, FWP began developing commercial use administrative rules to address the increased interest in conducting commercial use on Department owned or controlled lands and waters. The proposed rules would apply to commercial use at Fishing Access Sites, State Parks, and Wildlife Management Areas.

Examples of commercial use include trail rides, guided walks or tours, float trips, guided hunting or angling, game retrieval, equipment rentals, retail sales, food concessions, filming, nonprofit organizations, and academic institutions. Nonprofit Organizations and Educational Groups would be considered commercial use if they are charging a fee for an activity on FWP land. The rules would not apply to livestock grazing, farming, haying, fencing, communication towers, utility easements, right-of-ways, and oil and gas reserves, transferring of vehicles or people, antler collection, or trapping. The Department retains the option to waive or adjust fees if the use is for educational purposes, or if the proceeds will be donated back to the site, or if it is for a charitable cause.

Commercial use at Wildlife Management Areas generated the most comments of concern. The alternatives that were considered included allowing approved commercial use, prohibiting it entirely, or prohibiting commercial hunting and fishing outfitting but allowing other approved commercial use.

Commercial use on Department lands is a privilege not a right, and must be managed to prevent or minimize conflicts with the non-commercial public, therefore FWP may prohibit, restrict, condition, and/or manage commercial use. Restrictions on water-based outfitters and guides are governed by statewide river recreation rules.

Commercial hunting outfitting is prohibited on all Department lands, however game retrieval is allowed. Commercial fishing outfitting is prohibited on all Wildlife Management Areas. FWP may authorize hunting outfitters to travel on designated trails.

A permit, issued by FWP, is required to conduct commercial use. There are two types of commercial use permits available - the Fishing Access Site Permit, and the Restricted Use Permit. The Fishing Access Site Permit is for water-based outfitting at fishing access sites that provide access to non-restricted water bodies, and for water-based guiding at all fishing access sites. The Restricted Use Permit is for water-based outfitting at fishing access sites that provide access to restricted water-bodies, and for all other forms of commercial use. Permit holders may not sell, lease, or rent the permit, but they may hire or contract persons to provide authorized services or pay an agent to recruit clients.

Permits are not transferable. If a permit holder sells in entirety the part of their business that is operated under a commercial use permit, the Department shall issue a new permit to the buyer and authorize the same number of allocated units. The buyer must obtain all required licenses or permits and agree to the terms of the permit. The new permit is valid for the remainder of the seller's permit term. Sperry said outfitters may be operating on several rivers, therefore they requested that they not have to sell their entire business and cease outfitting totally, but would still be allowed to operate on other rivers.

Permit holders may not sell, lease, or rent client days, launches or other allocated units of use, temporarily or permanently, similar to the rule already in place for the Beaverhead and Big Hole Rivers. Selling, leasing, or renting of launches on the Smith River would be prohibited, however temporary exchanges with no compensation would be allowed. The existing Smith River Rule allows outfitters to rent, lease, or sell launches to other Smith River outfitters. *(Note: The Commission voted later in the meeting to allow Smith River outfitters to rent or lease launches within a single use season).*

The FAS Permit is valid for one license year. It authorizes a water-based outfitter to conduct use at any FAS that provides access to a non-restricted water body, and authorizes a water-based guide, operating under the authority of a water-based outfitter, to conduct use at any FAS. FAS Permits are available through ALS and license providers.

Restricted Use Permits authorize water-based outfitters to conduct use at FASs on a restricted use water body, and authorizes other types of commercial use at fishing access sites, state parks, and Wildlife Management Areas. Prior to issuing permits for WMAs, FWP must prepare a commercial use plan that outlines the types of commercial use that may be authorized, as well as the terms, conditions, and volume of commercial use expected, and methods for allocating permits. A Restricted Use Permit is valid for the time period specified on the permit, not to exceed 5 years. When a permit expires, FWP may issue a new permit to the previous permit holder in good standing.

FWP may authorize commercial use concession contracts using state purchasing and contracting guidelines. The Department may design a commercial use permit in coordination with another agency, but it must be consistent with Department restrictions on commercial use.

Commercial use permit fees compensate the public for conducting business on public land and helps to off-set physical impacts on the land, as well as assists in site maintenance. The Department may waive or adjust fees if the purpose of the use is for educational purposes or a charitable cause, or if the proceeds are to be donated back to the site. Revenue for the fees obtained from commercial use at fishing access sites would be utilized for fishing access programs, river recreation management, and for enforcement.

The **Fishing Access Site Permit Fees** for water-based Outfitters is \$150 per year, and is \$50 per year for water-based Guides. (Note: The Commission voted later to change to \$100 for both).

The Restricted Use Permit (RUP) allows the Department the choice of a fee system based on types of commercial use, input from commercial users, the cost of administering commercial use, revenue generated by fee system, and consistency with other state/federal fees. The Department may adjust the restricted use permit fees for guided tours or groups, special events and vending, still photography, and filming to accommodate the nature of the activity and to compensate for Department staffing needs pertaining to the activity

The Department may use one of the following fee systems for RUPs for **water-based outfitters**:

Fee System A: The restricted use permit fee is 3% of the unadjusted (gross) income from water-based outfitting that uses Department land for any part of a day,

Fee System B: The restricted use permit fee for licensed water-based angling outfitters is \$5 per client day conducted on Department land for any part of a day. This fee is based on three percent of an average advertised daily client rate of \$180, rounded to the nearest dollar. The restricted use permit fee for non-licensed non-angling water-based outfitters is \$2 per client day conducted on Department land for any part of a day. This fee is based on three percent of an average advertised daily client rate of \$65, rounded to the nearest dollar; or

Fee System C: The restricted use permit fee for licensed water-based angling outfitters is \$4 per allocated client day, regardless of whether use occurred. This fee is based on two percent of an average advertised daily client rate of \$180, rounded to the nearest dollar. The restricted use permit fee for non-licensed non-angling water-based outfitters is \$1 per allocated client day, regardless of whether use occurred. This fee is based on two percent of an average advertised daily client rate of \$65, rounded to the nearest dollar.

The Department may use one of the following fee systems for RUPs for **guided tours or trips**:

Fee system A: the restricted use permit fee is 3% of the unadjusted (gross) income from a guided tour or trip that uses Department land for any part of a day; or

Fee system B: the restricted use permit fee is a minimum of \$2 per client day and a maximum of \$10 per client day.

The Department may use one of the following fee systems for RUPs for **special events**:

Fee system A: The restricted use permit fee for a special event is a minimum of \$10 per day and a maximum of \$50 per day; or

Fee system B: The restricted use permit fee for a special event is a minimum of \$2 per participant and a maximum of \$10 per participant.

The Department may use one of the following fee systems for RUPs for **vending**:

Fee system A: The restricted use permit fee is 3% of the unadjusted (gross) income from vending that uses Department land for any part of a day; or

Fee system B: The restricted use permit fee is a minimum of \$10 per day and a maximum of \$50 per day.

The restricted use permit fees for **still photography and filming** are:

1 person crew: \$25 per day or \$50 per year

21 to 35 person crew: \$200 per day

2 to 5 person crew: \$50 per day

36 to 50 person crew: \$300 per day

6 to 20 person crew: \$100 per day

51 or more person crew: \$400 per day

The Department may waive or adjust the fees for still photography and filming when the sole purpose of the use is to promote Department land and resources.

The restricted use permit fees for **non-service and consumptive** types of commercial use are \$10 to \$300 per day. (Examples of non-service and consumptive types of commercial use include construction related use, water pumping, and commercial mushroom or berry picking).

Primary Type of Use:	Fishing Access Site Permit Fee:	Restricted Use Permit Fee:
Water-based Outfitter: Angling	\$ 150 /year <i>**(Commission voted to change to \$100)</i>	A) 3% of unadjusted income; B) \$5 per client day conducted; or C) \$4 per allocated client day.
Water-based Outfitter: Non-angling	\$ 150 /year <i>**(Commission voted to change to \$100)</i>	A) 3% of unadjusted income; B) \$2 per client day conducted; or C) \$1 per allocated client day.
Water-based Guide	\$ 50 /year <i>**(Commission voted to change to \$100)</i>	N/A
Guided Tour or Trip	N/A	A) 3% of unadjusted income; or B) \$2 - \$10 per client day.
Special Events	N/A	A) \$10 - \$50 per day; or B) \$2 - \$10 per participant.
Vending	N/A	A) 3% of unadjusted income; or B) \$10 - \$50 per day.
Still Photography and Filming	N/A	1 person crew: \$25 per day or \$50 per year; 2 to 5 person crew: \$50 per day; 6 to 20 person crew: \$100 per day; 21 – 35 person crew: \$200 per day; 36 – 50 person crew: \$300 per day; 51 or more person crew: \$400 per day.
Non-service Use and Consumptive Commercial Use	N/A	\$10 - \$300 per day.

Note: The commercial use permit fee rule includes a menu of fee systems from which the regional supervisor may select one system for a particular site or sites. The menu of options enables the Department to cooperate with other state and federal agencies and enables the regional supervisor to evaluate the types of commercial use present and select the most appropriate fee system based on ease of administration and input from the commercial users.

Commercial Use Rules apply to existing permit systems on Alberton Gorge, the Beaverhead and Big Hole Rivers, the Blackfoot River, and the Smith River. They also pertain to the sale of a business and selling or renting of client days and launches.

When a fishing outfitter's business is sold or transferred in its entirety, any river-use days that have been allocated to that fishing outfitter through his historic use of restricted-use streams are transferable to the new owner of the fishing outfitter's business. Upon the sale or transfer of a fishing outfitter's business, the outfitter who sells or transfers the business shall notify the new owner that the use of any transferred river-use days is subject to change pursuant to rules adopted by the Fish, Wildlife, and Parks Commission and that no property right attach to the transferred river-use days.

Selling or renting launches, days or permits is prohibited by the USFS and BLM under federal codes. When one of these transactions occurs on the Smith River, the parties go to the Forest Service for issuance of temporary days. There is concern by Forest Service as to whether they can continue to practice this as it is technically illegal. Sperry said the Regional Forester submitted comments on the proposed rules that were specific to the sale of businesses because there is the concern that a permit automatically issued by FWP might force the Forest Service to concur.

There are a few sites, such as Gallatin Wildlife Management Area, where hunting outfitters use designated trails to go through FWP lands to gain access to other public lands.

Workman asked if a projection of revenue had been made, and what the costs to administer the rule would be. Sperry replied that projected revenue totals approximately \$237,000, which should offset the costs. As a portion of FWP's budget proposal, based on these projections, FWP proposes to create two full-time River Manager FTEs. The revenue will also be available for use at the Fishing Access Sites for operation and maintenance costs. FWP currently spends one million dollars of sportsmen's dollars, in addition to earmarked funds, for maintenance of FASs.

Brenden stated he felt the fee rule is complex, and he feels outfitters will not want to publicize their income. He added that the legislature will look closely at the proposal to add more FTEs.

Smith said the rule appears to be complex due to its options, but once it is implemented it will not be that difficult. He agreed that the legislature closely reviews all revenue and expenditures made by the Department, and added that before a budget is taken to the Governor's office, it comes before the Commission for approval first.

Chairman Doherty asked for public comment.

Mike Geary and Brandon Boedecker, Smith River Outfitters, said their only objection is regarding the prohibition on the transfer and leasing of trips/launches. The Smith River has a 14-year history of small owners transferring which allows them to pick up additional trips. No impact is made on the river. By not allowing them to trade with other operators, clients will pay more for shuttles, and gas stations, etc will lose money.

Bob Gilbert, Walleyes Unlimited, said they object to paying this additional fee for conducting fishing tournaments. They cannot make a profit on fishing tournaments, so most of the money goes to prizes etc. anyway. Their Chapters spend thousands of dollars per year maintaining fishing access sites. They provide handicapped docks, picnic tables, and fish cleaning stations at some sites. They understand charging those who are making profits, however those people pay taxes so they are putting it back anyway.

Curtis Spindler, Montana Bass Federation, said they were taken by surprise when they saw that non-profits organizations were included. What money they acquire through tournaments goes into youth and conservation projects. If they have to give more to FWP, they will have less for the projects.

Robin Cunningham, Fishing Outfitters Association of Montana, asked why there is a distinction between commercial and non-commercial. He said there is no definition of what a non-angling water based outfitter is.

Bob Wiltshire, Federation of Fly Fishermen, said he hadn't been aware that rules were under consideration. The Department has done an excellent job on for-profits, but non-profits have not been properly reviewed. Their annual fly fishing workshop has some categories that generate profit while others do not. He feels confused about what constitutes commercial use - if they are not commercial they become non-commercial. Does not like to see berry pickers charged while antler hunters are not. He disagreed with fees for commercial fishing. The needs of educational and noncommercial have not been addressed.

Todd France, Madison Valley, said the amount of commercial use by outfitters should be compared to the general public. He is concerned about a 3% fee assessment. He suggested that the revenue be used to hire additional wardens rather than river recreation managers.

Mary Ellen Schnurr, MOGA, suggested changing the words "non-angling outfitter" to "service provider". She is concerned about the differential fee between guides and outfitters.

Pat Straw, suggested looking at a larger pool than the outfitters.

John Herzer, Blackfoot Outfitters, wants to make sure they can lease trips on the Smith River.

Colton said a problem has been created with non-profit partners who have assisted FWP over the years. The Department should craft an exception for these types of groups.

Sperry said some non-profit organizations have a significant impact on the resources, while some non-profit organizations benefit fish and wildlife resources. There are two sets of circumstances involved.

Smith said exempting non-profits could be a contentious issue. There is also a difference between a bar vs a non-profit organization conducting a fishing tournament. Doherty said the Commission and Department are looking at commercial use rules because people are using the resources for commercial purposes. Doherty stated that the rules allow FWP to waive the fee. Colton said he did not want to see non-profit organizations refused because the Regional Supervisor doesn't know exactly where the money will go.

Much discussion ensued regarding fees relative to non-profit organizations, fishing tournaments, and the fee structure itself. Workman suggested holding off on a decision until more specifics are included. Colton said the rules need action now.

Smith suggested that the Commission provide clear direction at this time on any changes they wanted to apply to the rule. Those changes could be incorporated into the rule and voted on for content via a conference call next week. The rules themselves could be voted on now, as a whole, with the understanding the changes will be included after conference call verification that what is changed now is accurately reflected. The Commission discussed this option and opted to proceed as recommended. The following motions address the clarifications and amendments the Commission wished to incorporate into the final rules.

Workman said he does not feel that this “seat of the pants” decision is appropriate and declined to participate further.

Action: Mulligan moved and Colton seconded the motion to direct the Department to incorporate language into the rule that exempts fishing tournaments conducted by non-profit organizations, and that non-profit organizations can apply for a permit that would cover an entire year and they can do that at one location and not have to go to each region, and add language at the bottom of the fee table that clarifies that the intent is to choose the fee structure that is most efficient and most effective, and minimizes administrative problems for the users as well as for the Department. (Section of the Rule that talks about what the Region will use to make decisions). Motion carried. Four in favor – one opposed. (Workman opposed).

Action: Brenden moved and Colton seconded the motion to amend the rule to allow Smith River outfitters to lease, sell, rent, and trade launches on the Smith River within the given season. Remove the language from the rule that disallows leasing, selling, renting and trading on the Smith River.

Mulligan said it is a struggle as it has worked on the Smith River but not on the Beaverhead and the Big Hole and the other rivers. It is a huge issue. Colton said the proposed final rule would allow transfer without remuneration, but the outfitter can still charge for the trip. It is designed to retain consistency with what has been done in the past. The rule still allows economic opportunity, but just not off of the sale of the permit. He fears that it may become a fairness issue between the river users.

Brenden said there are inconsistencies throughout FWP, so the consistency point is a moot point. He feels if there is a problem on the Smith River, it can be corrected when it becomes a problem. There is still an inference of a property right. He wants to see people recreate in Montana.

Smith said that under the current Smith River rules, there have been two things occurring - renting and selling launches. If someone has ten launches and only eight bookings, and he wants to have ten launches next year, he can rent out two launches this year for a fee, but if he decides ten launches is too many for the next year, he can sell the two launches, and have that information changed in the FWP books so the two owners information would be modified in perpetuity.

Colton clarified that the intent of his motion was that outfitters could rent launches within one year, but that permanent transfers between outfitters (i.e. selling a launch) would not be allowed.

Action on motion: Motion carried. Three in favor – two opposed (Workman and Mulligan opposed).

Mulligan has concerns with the language “non-commercial public” because he does not see the need for it because commercial use is identified. Sperry said the reason behind using that language is because the interests of the commercial public are represented throughout the entire rule, and the Department wanted to make sure the interests of the non-commercial public were represented as well.

Action: Mulligan moved and Colton seconded the motion to change the language in new rule IV, item 2 that says “commercial use must be managed to prevent or minimize conflicts with the public...” Leaving “non-commercial public” in the rule could cause a dilemma of having to decide between two commercial uses and the public and it doesn’t add much to the rule. Motion carried. Four in favor – one opposed. (Workman opposed).

Mulligan said non-fishing folks might question what the difference is between “outfitter” and “guide”. The word “provider” might address that confusion. Smith agreed and suggested replacing the words “non-fishing water-based outfitters and guides” with “non-fishing water-based service providers”.

Action: Mulligan moved and Colton seconded the motion to replace the words “non-fishing water-based outfitters and guides” with “non-fishing water-based service providers” throughout the rules. Motion carried. Four in favor – one opposed. (Workman opposed).

Mulligan said language in Rule VII is specific to the BigHole and Beaverhead disallowed a situation where someone with a lot of days could broker the days to guides, which makes the guide act as an outfitter. This provides an avenue for FWP to take enforcement action if that activity takes place. He suggested not changing that. Sperry said it is common for outfitters to act as a guide for other outfitters and FWP wishes to continue to allow that.

Becky Docter, FWP Legal Counsel, said certain aspects of the commercial public do not need to have a proof of worker’s compensation or a independent contractor exemption certificate. The language in the rule reads the Department “may require proof ...” so if a business is not required to have proof, FWP does not require it either.

Mulligan said he is concerned with the language “the Department may issue a commercial use permit to a person, entity or business” as this allows a permit to be sold to an entity or a business, and not an individual. For example, his own business licenses are issued to the store, but as president of the store, his name is on the licenses, which makes him, not the store, responsible. His concern is issuance of permits to an entity and not to an individual. Dockter said generally there will be a point of contact, and the permit will likely be in both names as a DBA.

Smith said an option would be to amend the language so it would read “the Department may issue a commercial use permit to a person as an individual or as a representative of a business” which would make an individual person accountable.

Action: Mulligan moved and Colton seconded the motion to replace the language “the Department may issue a commercial use permit to a person, entity or business” with “the Department may issue a commercial use permit to a person as an individual or as a representative of a business”. Motion carried. Four in favor – one opposed. (Workman opposed).

Action: Mulligan moved and Colton seconded the motion that the term “allocated” be added to all appropriate places in the rule to reflect that the allocation of use on rivers will be handled by the Statewide River Recreation rules. Motion carried. Three in favor – two opposed. (Brenden and Workman opposed).

Mulligan asked for clarification on where exclusion of hunting outfitters but allowance of duck outfitters fits into the rule. Sperry suggested striking “non-hunting” from the “water-based outfitter or guide” definition.

Action: Mulligan moved and Brenden seconded the motion to remove the words “non-hunting” from the “water based outfitter or guide” definition in new Rule I. Motion carried. Four in favor – one opposed. (Workman opposed).

Mulligan said concerns had been brought up regarding the definition of “restricted water body”. He said the way it is defined it could include water bodies that have no wake zones. Sperry said the concern is that restricted water body could include waters that are cooperatively managed with other agencies. He and Dockter suggested adding the language “water that is under a cooperative management agreement with another agency concerning commercial use, and striking the words “or public”.

Action: Mulligan moved and Colton seconded the motion to add the language “water that is under a cooperative management agreement with another agency concerning commercial use” and strike the words “or public” in the Restricted Water Body definition. Motion carried. Four in favor – one opposed. (Workman opposed).

Doherty said in the general policy, where it says “commercial use must be managed to prevent or minimize conflicts with the public”. He suggested rewording the rule to say “commercial use must be managed to prevent or minimize conflicts with the public and the intended purposes of a site”.

Action: Doherty moved and Mulligan seconded the motion to replace the language “commercial use must be managed to prevent or minimize conflicts with the public” in General Policy subsection 2 with “commercial use must be managed to prevent or minimize conflicts with the public and the intended purposes of a site”.

Colton expressed concern that everything will be a conflict with the purpose of a site at any given time. He felt the language should be left as it was. Smith said that the purposes of state parks and FAS and WMAs are very different, so the rules apply very differently.

Action on Motion: Doherty withdrew his motion.

Action: Mulligan moved and Colton seconded the motion to add the word “news” to “media” under the Exceptions to the Applicability of Commercial Use Rules, subsection 7. Motion carried. Three in favor – two opposed. (Workman and Brenden opposed)

Smith and Dockter suggested that the Commission act on the rules with the understanding that a teleconference be scheduled for approving only the amendments made at the meeting today. A conference call was scheduled for Wednesday, December 20, 2007 at 1:30 p.m. to act on the amendments.

Action: Mulligan moved and Colton seconded the motion to adopt the final Commercial Use Rules as proposed, with the stipulation that final approval include the amendments to the language that were made today. Motion carried. Three in favor – two opposed. (Brenden and Workman opposed).

Sperry explained that a biennial fee rule also needs to be adopted to establish fees for commercial use.

Action: Colton moved and Mulligan seconded the motion to amend the commercial use fishing access site permit fees to \$100 for both guides and outfitters. Motion carried. Three in favor – two opposed. (Workman and Brenden opposed).

Action: Colton moved and Mulligan seconded the motion to approve the Commercial Use Fee Rule as recommended with the amendment to assess a \$100 fee to both outfitters and guides. Motion carried. Three in favor – two opposed. (Brenden and Workman opposed).

6. Smith River Special Use Area Rule – Final. Joe Maurier, FWP Parks Division Administrator, stated that everything in the Commercial Rules relates to the Smith River Rule, except for the transferability of permits and launches between outfitters. The six-week comment period generated seventy-three comments, with nearly all of them in support of the proposed rule. No changes were made to the tentative proposals.

The proposed tentative rule changes that were presented in September for Commission consideration were to waive the fee on up to two authorized outfitter launches for not-for-profit donated trips, to include the clarification that public launches within the peak float season will be limited to eight individuals, to reword the outfitter Permit Transfer section, to clarify that sub-letting, leasing, or other transfers of launches to outfitters outside the authorized group of Smith River outfitters is not allowed, to update the Smith River Authorized Outfitter table, and to revise the Rule to make it more reader friendly.

Maurier stated that FWP received more applications this year than ever before, and he said the river generated the second highest level of use this summer. A management plan update is planned for the near future.

Action: Brenden moved and Workman seconded the motion to approve the proposal to modify the Smith River Special Use Area Rule to incorporate the provisions of the broader Commercial Use Rules, and to provide up to two fee-waived outfitter trips each season, along with other miscellaneous wording and editing changes as proposed in the tentatives

Chairman Doherty asked for public comment. There was none.

Action on Motion: Motion carried.

7. Parks Biennial Fee Rule – Final. Joe Maurier, FWP Parks Division Administrator, explained that there are no recommended changes to the tentatives, except to retain camping at Prewett Creek FAS in response to public comment, to stipulate that commercial use of state parks and fishing access sites will be addressed under the Commercial Use Rule, and to ensure the Alberton Gorge Commercial Use section is consistent with the proposed Commercial Use Rule. Camping is still not recommended at Johnsrud FAS due to significant overuse, social issues, and an inadequate parking lot.

Action: Colton moved and Mulligan seconded the motion to adopt the final Parks Biennial Fee Rule, I move to adopt the final Parks Biennial Fee Rule, with the provision of retaining Prewett Creek FAS as a camping site and with the two commercial use clarifications.

Chairman Doherty asked for public comment. There was none.

Action on Motion: Motion carried. Four in favor – one opposed (Brenden).

8. Stranahan Acquisition in the Alberton Gorge Corridor – Final. Joe Maurier, FWP Parks Division Administrator, stated that this proposed 20-acre acquisition is contiguous to 306 acres of land already held by FWP in the Alberton Gorge Corridor, and could be developed for fishing access and for camping. The landowners, the Stranahan family, stated that the value of the land had increased, however they agreed to sell the property to FWP for \$220,000, which is the same price they paid for it several years ago. First American Title Company has agreed to provide title insurance at no cost. The public comment period on the Environmental Assessment generated nine comments of support.

Action: Workman moved and Colton seconded the motion to approve the acquisition of the 20-acre Stranahan parcel in the Alberton Gorge Corridor.

Chairman Doherty asked for public comment. There was none.

Action on Motion: Motion carried.

9. North Shore MO River Land Acquisition Next to Giant Springs Park – Endorsement. Gary Bertellotti, Region 4 Supervisor, explained that the property is located on the north shore of the Missouri River adjacent to the Lewis & Clark Heritage Greenway and Giant Springs State Park. Acquisition of this property would enhance public access to the North Shore trail system, and would provide an ideal location for a trailhead as well as fishing access site. This acquisition opportunity came about due to a purchase option negotiated by PPL Montana, however they are not prepared to purchase the land at this time. This option expires January 31, 2007.

This property is owned by the Sanders family, and their house is the only developed home site in the corridor. The Sanders' have been cooperative with in allowing the property to be held and not sold. The current sale price is \$385,000. Several potential partners have committed to assist the Department in acquisition of the Sanders properties. It is estimated that FWP's share of the total project would be approximately 25%.

Action: Doherty moved and Mulligan seconded the motion to approve further exploration into options to acquire the property of Amy and Shane Sanders to enhance recreational access and land conservation values on the north shore of the Missouri River. Motion carried.

10. Lilienthal Property / PPL Montana Public Access Mitigation (Cottonwood Grove)– Final. Chris Hunter, FWP Fisheries Division Administrator, stated that when the dams on the Missouri River were relicensed by the Federal Energy Regulatory Commission, the agreement was that PPL Montana would acquire and develop four public access sites, of which they have already acquired two. After consultation with FWP, this site was selected as the third site.

In December 2004, PPL purchased the 4-acre Lilienthal Property near Great Falls for \$70,000, and are now in the process of developing the site. If approved, FWP would pay PPL \$30,000 for the property. In turn, PPLM would place that amount into a trust fund established by the Recreation Plan process, and income from the trust fund will be used for other recreation projects in the Missouri-Madison River corridor. FWP would take over operation and maintenance of the site, but PPL would contribute \$10,000 each year to help cover O&M costs. This payment would be adjusted for inflation.

Action: Doherty moved and Mulligan seconded the motion to approve FWP acquisition of the Lilienthal Property from PPL Montana, LLC for \$30,000 and to accept \$10,000 annually (adjusted for inflation) for the operation and maintenance of the site from PPL Montana, LLC would contribute.

Chairman Doherty asked for public comment. There was none.

Action on Motion: Motion carried.

11. Machler Recreational Access & Conservation Easement on Big Spring Creek – Final. Chris Hunter, FWP Fisheries Division Administrator, said this 62-acre site is located between the Lazy KB FAS and the Carroll Trail FAS, and would be managed as a walk-in site, so development and maintenance costs would be very low. Several years ago, Mark Machler approached FWP and Natural Resource Conservation Services to discuss providing recreational access while protecting his land from subdivision, and the possibility of re-meandering a portion of Big Spring Creek that was straightened in 1961.

There is significance in re-meandering Big Spring Creek at this site because the straightening of this section of the creek in 1961 led to the passage of the Montana Natural Streambed and Land Preservation Act. When completed, the new channel will be approximately one mile long.

The cost of the easement is \$225,000. Potential funding sources include the Future Fisheries Program and Wallop-Breaux, as well as the Environmental Quality Incentives Program funding through the NRCS.

Colton said this is an outstanding easement, and Lewistown is supportive of the project.

Action: Colton moved and Workman seconded the motion to approve the acquisition of the Conservation and Recreational Access Easement on Big Spring Creek from Mr. Mark Machler.

Chairman Doherty asked for public comment. There was none.

Action on Motion: Motion carried.

12. Petition for No-Wake Zone on Swan Lake in Region 1 – Endorsement. **Jim Kropp, FWP Enforcement Division Administrator**, explained that FWP received a petition requesting that a no-wake zone be established on a one-mile section of Swan Lake at it's northern end. The Petitioners feel increased motorized boat use on the north end of Swan Lake is becoming a problem, and the potential development of a 28-boat marina near the outlet has increased their concerns. A 200-foot no-wake zone exists on the lake, as exists on all lakes in the Western Fishing District. This section of the lake is narrow, and decreases in width as it progresses down to the outlet. There are also numerous shallow shoals that keep boat speeds down within this area of concern.

Region 1 has not received complaints about water safety issues or social problems, nor have any accident reports been filed. **Jim Satterfield, Region 1 Supervisor**, stated that the Region's recommendation is to saturate the area with enforcement, increase education efforts, and evaluate the situation over the next year, after which time recommendations would be presented to the Commission. The concern exists that not all of the homeowners on Swan Lake are aware of this petition as several of them do not live at the lake during the winter.

Mulligan asked about the status of the proposed marina. Satterfield suspected that it has already been approved by the county Commission and is pretty much a done deal.

Workman said the majority of the people who signed the petition were in opposition to the marina. He said the marina is not built yet, and won't be for the next year, so its effects won't be discernable even then. He recommended accepting the region's recommendation

Satterfield said the Region will proceed with enforcement saturation and with education efforts.

Action: Workman moved and Brenden seconded the motion to deny the no-wake zone and increase enforcement presence in that area identified by the Petitioners to monitor issues that may arise, and come back to the Commission to report the findings in one year

Chairman Doherty asked for public comment.

Eric Thuesen, Helena, said he owns a small cabin on the west side of Swan Lake, and said he represents most of the neighbors in that vicinity, 250 members of the Swan Lakers, and over 100 petitioners in this request for a no-wake zone. He agreed that most of these people are against the marina development, but said the petition is not based solely on that opposition. He has not been in contact with Region 1 regarding this petition. He said that in 1999, when legislation authorized no-wake zones, they didn't have the northern end of Swan Lake in mind, but it fits perfectly within that scope. He said public safety is an issue. He said growth in the area is great and before someone gets hurt, this petition should be considered carefully. With the new development of over 200 homes, there will be many boats and lots of traffic.

Thuesen said there are nesting migratory birds on the two islands, and the area is rich in wildlife. He asked that the Commission not hold off for a year, but act now.

Brenden asked Kropp what the wardens would do if they saw someone on the lake acting in a reckless manner. Kropp replied that they can issue citations for operating in a reckless manner, or for intoxication if such is the case.

Brenden said he is concerned that although the Commission is receiving input from those who have signed the petition, there are many people that the Commission has not heard from that may feel differently. He said all people who use the lake must share responsibility. He supports the recommendation of the Department.

Colton said he is sympathetic to the petitioners, however, procedurally this needs to be presented to the public for comment. He asked Satterfield if enough data can be collected to make an informed decision in one year.

Satterfield replied that comments received throughout the summer will be summarized and brought to the Commission. Enforcement efforts will also be included.

Doherty said the higher presence of wardens will lower the number of problems on the lake.

Mulligan said he typically supports requests for no-wake zones. He said the only issue he has with this request is that it is too early to make a determination. The marina is not built yet. This motion does not kill the request, it just provides time for FWP to gather data. He said he wouldn't be surprised if in a year this area would be a no-wake zone.

Action on Motion: Motion carried. Three in favor – two opposed. (Doherty and Colton opposed).

13. Petition for No-Wake Zone at White Sandy on Hauser Lake – Endorsement. Jim Kropp, FWP Enforcement Division Administrator, explained that the Bureau of Land Management has developed a new campground at White Sandy Beach on Hauser Lake, adjacent to Black Sandy State Park. Because increased boating activity could potentially create public safety hazards, the BLM is requesting a no-wake zone restriction be established to curb excess speed by motorboats in this congested area.

Action: Mulligan moved and Colton seconded the motion to initiate rulemaking procedures to adopt a no-wake zone at White Sandy Campground on Hauser Lake. Motion carried.

14. Lyman Creek Acquisition in Region 2 in Ravalli County – Final. Don Childress, FWP Wildlife Division Administrator, said this proposed acquisition is for 367.92 acres in the French Basin of Ravalli County within the Sula State Forest and Bitterroot National Forest. The property is part of the principal winter range for about 1,000 elk, and several hundred mule and white-tailed deer.

FWP proposes to acquire the property for the appraised value, \$625,500, using Habitat Montana funds. The Rocky Mountain Elk Foundation holds the option to purchase the land from the current landowners, the Wetzsteon family, and they will provide additional funds to complete the acquisition.

If approved for acquisition, the property would be exchanged to DNRC for inclusion in the Sula State Forest, and DNRC land of equal value adjacent to Calf Creek and Threemile Wildlife Management Areas would be transferred to FWP. DNRC's exchange process criteria will require a separate environmental public review and approval process.

Action: Colton moved and Mulligan seconded the motion to spend \$625,500 of Habitat Montana funds to acquire the Wetzsteon property in Ravalli County, and to proceed with the DNRC land exchange.

Chairman Doherty asked for public comment. There was none.

Action on Motion: Motion carried. Four in favor – one opposed (Brenden opposed).

The Commissioners unanimously expressed appreciation to Rocky Mountain Elk Foundation for their participation in providing real estate skills & additional funding, and to the Wetzsteon family for their public spirit by selling the property to a public agency rather than accepting the highest offer.

15. Bernie Hart Farm Conservation Easement in Region 6 in Valley County – Final. Don Childress, FWP Wildlife Division Administrator, said this acquisition is a 402-acre conservation easement on the Hart Farm in Valley County, along the Mile River. The land consists of 35 acres of wetlands; 208 acres of riparian vegetation, and internal oxbows; cottonwood bottoms with silver sagebrush interspersed; and cultivated farm and hay land. Wildlife species include white-tailed deer, ring-necked pheasants, Merriam's turkeys, doves, a variety of waterfowl, songbirds, and other small animals. The comment period generated only supportive comments.

The cost of the easement is \$200,000, of which \$180,000 will be provided from Habitat Montana Funds, and a donation of \$20,000 from the National Wildlife Turkey Federation will cover the balance.

Action: Brenden moved and Mulligan seconded the motion to approve the acquisition of the Bernie Hart Farm Conservation Easement as presented.

Chairman Doherty asked for public comment. There was none.

Action on Motion: Motion carried.

The Commission expressed appreciation to the Montana Chapter of the National Wild Turkey Federation for their \$20,000 donation.

16. Ovando Mountain Land Acquisition / Jacobsen-Valiton Property – Final. Don Childress, FWP Wildlife Division Administrator, explained that the proposed acquisition consists of 180-acres of private property near Ovando. FWP would acquire the land as an addition to the Blackfoot Clearwater Wildlife Management Area. The Rocky Mountain Elk Foundation negotiated a purchase agreement with two private landowners, Jacobson and Valiton, and now proposes to sell the land to FWP for its appraised value, which is \$270,000, or \$1,500 per acre.

The property provides important winter range on the south face of Ovando Mountain for approximately 500 elk, 200 white-tailed deer and 200 mule deer, and habitat for black bear, grizzly bear and many other wildlife species.

This proposal is consistent with the Blackfoot Challenge's efforts to maintain traditional land uses and rural lifestyles in the Blackfoot watershed. Without public acquisition this acreage is vulnerable to development, which would adversely affect wildlife use of the winter range, as well as impact hunting and public recreational opportunities in the area.

The comment period generated unanimous support for the proposal.

Action: Mulligan moved and Colton seconded the motion to purchase the 180-acre Jacobsen-Valiton property for addition to the Ovando Mountain unit of the Blackfoot-Clearwater Wildlife Management Area.

Chairman Doherty asked for public comment. There was none.

Action on Motion: Motion carried.

17. 2007 Black Bear Quotas – Tentative. Quentin Kujala, FWP Wildlife Division Management Bureau Chief, state there were no proposed changes to the Black Bear quotas from those of 2006.

Action: Brenden moved and Colton seconded the motion to approve the tentative 2007 Black Bear quotas (no change from 2006 quotas) as recommended by the Department. Motion carried.

18. 2007 Spring Turkey Seasons and Quotas – Tentative. Quentin Kujala, FWP Wildlife Division Management Bureau Chief, stated there were no proposed changes to the Spring Turkey seasons or quotas from those of 2006 other than the annual movement of calendar dates. The spring season dates are April 7 through May 20, 2007.

Action: Colton moved and Brenden seconded the motion to approve the tentative 2007 Spring Turkey regulations and quotas (no change from 2006 except for annual calendar progression) as recommended by the Department. Motion carried.

19. 2007 Game Damage Permit Authorizations – Tentative. Quentin Kujala, FWP Wildlife Division Management Bureau Chief, stated there were no proposed changes to the game damage permits from those of 2006.

Action: Mulligan moved and Colton seconded the motion to approve the tentative 2007 Game Damage Permit Authorizations as recommended by the Department.. Motion carried.

20. 2007 Sheep Trapping and Transplanting – Endorsement. Quentin Kujala, FWP Wildlife Division Management Bureau Chief, presented the suggested Sheep transplant recommendations.

One hundred and ninety five (195) bighorn sheep have been identified for trap and transplant via net gunning. Strong sheep population levels in the targeted hunting districts prompt this trap and transplant effort. Overpopulation of sheep generates disease and die-off concerns.

The sheep will be trapped from the following areas:

- 40 from the Missouri River Breaks (HD 680)
- 50 from the Sun River (HDs 422 and 424)
- 55 from Region 2 (HDs 210, 216 and 283)
- 50 from Region 1 (10 from Wild Horse Island, 40 from HD 124)

These sheep will be relocated to:

- North Dakota (20 from R6)
- Nebraska (20 from R6, 30 from R4)
- Utah (20 from R4, 55 from R2)
- Wyoming (50 from R1)

The destination states will cover sheep trapping and lab costs, approximately \$650 per sheep.

In addition, up to 25 sheep may be captured from the Ruby Mountains and relocated to the Highlands south of Butte (HD 340) honoring the Greenhorn Mountains bighorn sheep release agreement as it relates to tolerated sheep distribution.

Colton said he feels this is short-sighted management, and FWP will run out of places to take them to. There are people who would like to hunt sheep even if not for a ram, but tags are expensive. Kujala said ewes are an option on the applications, and there is not a seven year wait to hunt them. **Jeff Herbert, FWP Wildlife Division Assistant Administrator**, said FWP would like to see more ewes harvested. He added that reducing the price of the tags would go a long way toward management.

Peterman said there is proposed legislation this session to reduce prices for the tags.

Colton said his point is that he is glad relocation is not the management solution. The Department has not done a good job of marketing this animal. Colton expressed frustration that Montana is providing fifty sheep to Wyoming when Wyoming has refused to cooperate with Montana on issues such as sage grouse and wolves, or brucellosis feeding ground, or world class fisheries, or the provision of water from the rivers. He cannot support this proposal based on those grounds.

Mulligan said he shares the same concerns as Colton, however it is not wise to overpopulate the sheep.

Kujala said the situation was more that FWP needed a place to transplant them to than it was that WY asking for them.

Action: Brenden moved to endorse the sheep capture and transplant effort as recommended by the Department. Mulligan seconded the motion with the notation that cooperation with Wyoming may become problematic in the future. Motion carried. Four in favor – one opposed (Colton opposed).

21. Refine 2007 Mule Deer Season Adjustments in Region 5 Due to Forest Fires – Tentative. **Quentin Kujala, FWP Wildlife Division Management Bureau Chief**, explained that 242,934 acres burned in Hunting Districts 520, 560 and 575. Ninety percent of the burned land was mule deer winter range resulting in reduced habitat carrying capacity. Additionally, the Pine Ridge Complex, the Bundy, Emerald Hills, Majerus, and Juniper fires burned 217,824 acres, representing 12 percent of HD 590, therefore there will be reductions in mule deer carrying capacity in these areas as well.

In October the Commission approved either-sex mule deer harvest on the A licenses with 1,000 additional B licenses valid in parts of these hunting districts. Those harvest opportunities were available for approximately three weeks of the general season. This action intends to further refine the October decision to include all of the hunting districts in their entirety to address communication concerns associated with partial hunting-district closures. Deer populations distant from the burned areas will likely sustain themselves under the expanded harvest potential.

Action: Colton moved and Brenden seconded the motion to adopt the tentative Region 5 Deer season changes as recommended by FWP.

Mulligan asked if antlerless permits would be identified when it goes out.

Ray Mule', FWP Region 5 Wildlife Manager, said the B license quotas from last year are still in effect but no second B licenses would be maintained. The second B licenses are not part of this proposal. After spring harvest surveys are conducted, the Department will handle A licenses through regular quota adjustments.

Action on Motion: Motion carried.

22. Pennsylvania Request for Pheasant Trapping – Informational. The state of Pennsylvania, Pheasants Forever and Montana have had limited communication addressing the potential for pheasants from northeast Montana to be trapped and relocated to Pennsylvania. If that effort and objective were to be approved, logistics would likely take place this winter although specific logistics, to include capture site(s), capture method and numbers have not been developed. One possibility is for this effort to take place on Tribal lands outside of FWP Commission authority. While Montana pheasant populations could withstand some trap and removal, Montana does not necessarily represent the only or best source of pheasants for a Pennsylvania release. The Department is not in support of this.

Brenden said he had received several calls from the residents in his region regarding this transaction, and they are all steadfastly against it. A great deal of block management land would be jeopardized if this passes.

The Commission concurred with the Department's recommendation not to proceed with this proposal.

23. 2007 Bighorn Sheep HD340 Closure – Tentative. Quentin Kujala, FWP Wildlife Division Management Bureau Chief, said the Department recommends a hunting closure in HD340 due to extremely low numbers and no recruitment in the area. The fall survey revealed only twelve sheep and no lambs.

Action: Mullign moved and Colton seconded the motion to close HD340 to all Bighorn Sheep hunting. Motion carried.

24. Sage Brush Landowner Incentive Plan Program – Informational. This topic was postponed until a future meeting.

25. Grizzly Bear Management Plan for Western Montana – Final. The U.S. Fish and Wildlife Service, in cooperation with FWP, the U.S. Forest Service, the National Park Service, the Bureau of Land Management, the Blackfeet Tribe, and the Confederated Salish and Kootenai Tribes, currently manage grizzly bears in Montana as "threatened" under authority of the Endangered Species Act. This cooperative management is under the Interagency Grizzly Bear Committee (IGBC) within which all agencies and tribes are partners.

Arnie Dood, FWP Endangered Species Biologist, said there are many factors and people involved with wide ranging animals such as grizzly bears. An environmental impact statement was drafted, presented for public comment, and now finalized. He provided a Power Point presentation.

FWP envisions maintaining core populations of grizzly bears at no less than 500 bears in the Northern Continental Divide area, and at 90-125 in the Cabinet-Yaak area. It is the hope that bears can be managed like other wildlife species. Dood said preventative measures are preferred rather than dealing with problems after the fact. Public support and tolerance for grizzlies is the key to their long-term recovery and re-occupation of suitable habitats

Dood briefed the Commission on the following key points written into the Management Plan.

Conflict Management	Future Distribution
Human Safety	Harvest Management
Livestock Conflicts	Enforcement
Property Damage	Education and Public Outreach
Habitat Monitoring and Management	Expanded local Involvement
Habitat Security and Motorized Access	Costs and Funding
Food Sources	Cabinet Yaak Ecosystem
Private Land Development	Northern Continental Divide Ecosystem
Trails	Bitterroot Ecosystem
Population Monitoring and Management	Future Challenges

Action: Colton moved and Workman seconded the motion to approve finalization of the draft EIS on Grizzly Bear Management in Western Montana.

Chairman Doherty asked for public comment. There was none.

Action on Motion: Motion carried. Four in favor – one opposed (Brenden opposed).

26. Require Mandatory Reporting of Previous Years Hunting and Fishing Harvest Before Purchasing Licenses for the Next Year – Informational. This topic was postponed until a future meeting. Jeff Herbert noted that if this is postponed at this time, it will not appear in the regulations – it will be too late.

27. Open Microphone – Public Opportunity to Address Additional FWP Issues. There was none.

Chairman Doherty thanked Commissioners Mulligan and Brenden for their service.

Peterman said the two new Commissioners had not been appointed yet. He asked retiring Commissioners Mulligan and Brenden to come back to the next meeting to participate in an orientation session for the new Commissioners, and a farewell function for them.

Doherty announced that three valued FWP staff members were retiring from the Department at the end of the year. He thanked them for their dedicated service, and presented them with letters of appreciation. Don Childress, FWP Wildlife Division Administrator, is retiring after 30 years of service to FWP, Glenn Erickson, FWP Field Service Administrator, is retiring after 30 years of service to FWP, and Deb Dils, FWP Field Services Land Section Supervisor, is retiring after more than 10 years of service to FWP.

Action: Brenden moved and Mulligan seconded the motion to adjourn the meeting. Motion carried.

Meeting adjourned at 4:20p.m.

Steve Doherty, Chairman

Larry Peterman, Chief of Field Operations